Filed 6/1/10 R.H. v. Superior Court CA2/2

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

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| R.H.,<br><br>Petitioner,<br><br>v.<br><br>THE SUPERIOR COURT OF LOS ANGELES COUNTY,<br><br>Respondent;<br><br>LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES,<br><br>Real Party in Interest. | B222795<br><br>(Los Angeles County Super. Ct. No. CK74201) |

ORIGINAL PROCEEDING. Petition for extraordinary writ. (Cal. Rules of Court, rule 8.452.) Sherri S. Sobel, Juvenile Court Referee. Petition denied.

Los Angeles Dependency Lawyers, Inc., Law Office of Timothy Martella, Eliot Lee Grossman and Mary Hegardt for Petitioner

No appearance for Respondent.

Andrea Sheridan Ordin, County Counsel, James M. Owens, Assistant County Counsel, and Jacklyn K. Louie, Deputy County Counsel, for Real Party in Interest.

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R.H. (mother) has filed a petition for extraordinary writ (Cal. Rules of Court, rule 8.452) challenging an order of the juvenile court denying her family reunification services with her son A., and setting the underlying dependency proceeding for a hearing pursuant to Welfare and Institutions Code section 366.26.[1] We deny the petition.

## FACTS AND PROCEDURAL HISTORY

A., born in November 2009, is the youngest of three siblings. On August 27, 2008, the Los Angeles County Department of Children and Family Services (DCFS) received a referral on its Child Protection Hotline alleging mother had severely neglected her children, E. (then age two) and M. (then age seven months). Mother had taken M. to the doctor because M. was unable to hold her bottle. M. was examined and found to have a healing fracture in her right arm consistent with inflicted trauma, and mother could not explain how the injury occurred. Mother was eventually arrested, charged and pled nolo contendere to a misdemeanor charge of willful cruelty to a child. (Pen. Code, § 273, subd. (a).)

On September 2, 2008, DCFS filed a section 300 petition alleging serious physical harm (§ 300, subd. (a)), failure to protect M. (§ 300, subd. (b)), severe physical abuse of a child under five (§ 300, subd. (e)) and abuse of sibling (§ 300, subd. (j)). In addition to the allegations relating to the physical abuse of M., DCFS further alleged that mother and the children's father, F.P., had a history of verbal altercations and domestic violence by father against mother, which placed the children at risk of physical and emotional harm. At the time DCFS detained E. and M., the parents did not live together and mother had obtained a restraining order against father.

On November 3, 2008, the juvenile court sustained the petition, as amended, pursuant to section 300, subdivisions (a), (b), (e) and (j). The children were placed with their maternal grandmother.

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[1] All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

The parents were provided with reunification services. During the ensuing months, mother attended court-ordered parenting classes and anger management classes. Mother and father attended several couples' therapy sessions, but were dropped from the program because they missed several scheduled appointments. Both mother and father stated they were not interested in continuing their romantic relationship, but father said he did want to improve the parenting relationship. Both parents visited the children consistently and participated in E.'s speech therapy and other classes.

Despite the parents' statements that they were no longer involved in a romantic relationship, mother became pregnant with A., who was born in November 2009. On December 29, 2009, mother and father became involved in an altercation that culminated with mother dropping A. on the ground. Mother had gone to father's home to "engage him with his children," and the family had spent time together during the day. When they returned to father's home, he went inside to get milk for mother. A. began to cry. Mother began to yell at father about "not helping with the baby." Father decided to walk away and not engage mother in an argument because the children were in the car. Father went into his house, locked the door, and went out to lock the gate knowing mother would attempt to get in. Mother was pushing on the gate while father was pushing in the other direction trying to lock it. Father stated that mother pushed hard enough on the gate to break the gate off its hinges. Mother was holding A. while she pushed on the gate, and she dropped A. on the grass. Father (who had not realized mother was holding A.), opened the gate, picked A. up off the ground, and refused to give him back to mother. Father's roommate called the police. The police released all three children to the maternal grandmother. A doctor later examined A. and did not find any injuries.

DCFS detained A. on December 31, 2009, and filed a section 300 petition on January 6, 2010. The court found DCFS had made a prima facie case for detaining A. Although the court had previously allowed the parents to have up to eight hours per week of unmonitored visitation with the children, the court changed its order to require that the visitation be monitored and the parents were to visit the children separately.

On January 13, 2010, the court convened for a pretrial resolution conference for A. and a section 366.21, subdivision (f) hearing for E. and M. The court continued the matter because the parents were not present.

In its report prepared for the January 13, 2010, hearing, DCFS was not optimistic about the possibility of returning the children to the parents' care. The social worker noted that the parents continued to have "confrontations and arguments that occur in the child(ren)'s presence. Mother and father have stated that their romantic relationship was over and their couple's therapy was terminated in [May 2009] due to 3 missed sessions. Regardless of this declaration, mother became pregnant with their third child, [A.]. On 12/22/2009 CSW had inquired with mother what the plan was for her relationship with father. Mother stated that she was not going to continue a romantic relationship and would not be living with father. Even if mother and father are not romantically involved, they continue to have issues that manifest into verbal altercations as evidenced by the incident of 12/28/2009. With the mother[']s and father's on again/off again relationship, a stable, safe environment for the children does not seem possible at this time." The social worker reported that all the children were appropriately placed with the maternal grandmother, who "provides a safe, stable and loving home for her grandchildren." However, the social worker questioned the parents' ability to provide such a safe and secure home in view of the "continued domestic disputes between mother and father and their statements of no longer being involved . . . ."

DCFS also received a report from The Gary Center, where both parents had participated in counseling sessions. The counselor reported that mother "has appeared defensive, frustrated and upset during most of her sessions throughout her treatment. She also appeared to have minimal awareness of how her interaction with her children's father contributes to the current difficulties she is facing with her children's father and her children. She appears motivated for treatment but appears to make minimal effort to make any changes in her behavior as evidenced by the anger and frustration expressed in the sessions." Father displayed a similar attitude. Mother minimized her domestic violence issues with father, stating that father's domestic violence conviction "was due to

him biting mother" and "there was never any hitting." Mother likewise minimized the conduct that resulted in her child endangerment condition, stating that "she was found guilty of [M.] being injured while in her care, not caused directly by her." DCFS recommended that the court terminate reunification services for E. and M., and that no services be provided with A.

On February 23, 2010, the court conducted a combined section 366.21, subdivision (f) hearing for E. and M., and an adjudication/disposition hearing for A. Mother and father both testified concerning the events of December 29, 2009. Father testified that he and mother were not speaking to each other by the end of the day. A. was crying and mother asked father to help her. Father, who was frustrated, said he would not. Mother threw A.'s baby blanket at him, and father threw it back. Father walked away because he "knew things were starting to get escalated." Father went into his house and locked the door. As mother was trying to come through the side gate, she tripped and dropped A. on the grass. Father testified that since the incident, his contact with mother was limited to counseling sessions.

Mother also testified. When asked whether she understood the reasons DCFS had removed her children in 2008, mother stated it was "the accident with [M.] and the fracture to her arm, and later because of the domestic violence." Mother testified that she had completed 52 weeks of parenting classes and 12 weeks of anger management. When asked what she had learned about the effects of domestic violence on children, mother stated "that the domestic violence can also teach the kids to be angry and teach them that hitting is okay, and the screaming can do a lot of, like, insecurities to the children."

With respect to the incident on December 29, 2009, mother testified that both she and father were tired; she could not remember why she and father got into an argument, but "it just escalated into something bigger." Mother was frustrated because father would not help her; she went after father "out of the frustration of not being able to fix an argument or a conflict between us, thinking maybe we can talk about it. And it just grew from there. And that's when I dropped the baby." Mother said that her "first mistake was trying to talk about the problem instead of just walking away." She now visits the

children alone and has no contact with father "unless it's, you know, how are the kids or, you know, to ask about them or let him know something about school." Her only relationship with father is "co-parenting." Mother testified on cross-examination that she thought it was now possible to be co-parenting with father without getting to a point where conflict would require one of them to "walk away."

With respect to the two older children, the court found by a preponderance of the evidence that return of the children to the parents' care would create a substantial risk of danger to the children's physical or emotional well-being. The court said the parents had "not understood the reason why the children were taken into custody," had not made significant progress in resolving the problems that led to the children's removal, and had not demonstrated the capacity and ability to complete the objectives of the case plan and provide for the children's safety, protection, physical or emotional well-being and special needs. The court said it could not "make a substantial probability of return by the 18-month date which is less than one month away." The court terminated reunification services but allowed visitation to continue.

With respect to A., the court sustained paragraphs b-3, b-4 and j-1 of the petition, relating to the parents' failure to protect A. and sibling abuse. The court denied the parents reunification services pursuant to section 361.5, subdivision (b)(10).

Mother filed a timely "Notice of Intent to File Writ Petition." Father did not file a notice of intent.

On March 24, 2010, mother's appellate counsel notified this court that, after reviewing the record, he could not find any arguably meritorious issues with regard to the court's termination of reunification services with E. and M. Mother challenges only that portion of the court's order denying her reunification services with A.

**DISCUSSION**

Section 361.5, subdivision (b), provides that "[r]eunification services need not be provided to a parent or guardian described in this subdivision when the court finds, by clear and convincing evidence, any of the following: [¶] . . . [¶] (10) That the court ordered termination of reunification services for any siblings or half siblings of the child

because the parent or guardian failed to reunify with the sibling or half sibling after the sibling or half sibling had been removed from that parent or guardian pursuant to Section 361 and that parent or guardian is the same parent or guardian described in subdivision (a) and that, according to the findings of the court, this parent or guardian *has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling or half sibling of that child from that parent or guardian."* (Italics added.)

Mother contends that a parent may be denied reunification services under section 361.5, subdivision (b)(10), only when a sibling is detained and made a dependent child of the court subsequent to the termination of services for the parent with regard to another child. Arguing that "subsequent does not mean simultaneous," mother refers to the italicized language above as an "escape clause" that requires the court to allow her time to make a reasonable effort to treat the problems that resulted in the removal of E. and M. before the court determines whether or not she should be offered reunification services with respect to A.

On its face, the statute does not require any lapse of time between the termination of services as to one sibling and the denial of services as to another. (*In re Harmony B.* (2005) 125 Cal.App.4th 831, 840.) Nor are we inclined to read such a requirement into the statute. "[S]ubdivision (b)(10) of section 361.5 authorizes the court to deny services to any parent whose rights to another child have been terminated, or who has another child under a permanent plan after reunification efforts have failed. It does not matter whether the described actions were taken before or after the current dependency petition was filed; the only requirement is that they have occurred before a disposition is made in the instant case." (*Riverside County Dept. of Public Social Services v. Superior Court* (1999) 71 Cal.App.4th 483, 491; see also *Marlene M. v. Superior Court* (2000) 80 Cal.App.4th 1139, 1148 [reunification services need not be provided to a parent when reunification services have been terminated as to another child even though the subject petition was filed before that termination of reunification services].)

The court made it clear to the parents that if they made significant progress during the ensuing four months (the time period prior to the section 366.26 hearing), they could

file a petition pursuant to section 388 and the court would revisit its ruling at that time. The court told the parents, "[T]he two of you need to figure out what exactly is wrong and fix it. This co-parenting business is a waste of your time. You need to each move on, get a life, do what you need to do, and take care of your children separately. And I wish you both good luck. You have four months to show me." The court allowed the parents' visitation with the children to continue, and although the court was not willing to order DCFS to provide the parents with reunification services (such as counseling), the court made it clear that the parents were free to obtain such services on their own.

**DISPOSITION**

The petition for extraordinary writ is denied. This opinion is made final forthwith as to this court.

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_____, J.

DOI TODD

We concur:

_____, P. J.

BOREN

_____, J.

CHAVEZ